

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Kayla S. Bivings, Appellant

v.

Magistrate Andrea Paprzycki, Judge Marika Frady, Judge Hilary Gurney,
Scott Sosebee, Jessica Yates, and the Colorado Office of Attorney
Regulation Counsel (OARC),
Appellees

Case No.: 25-1171

APPELLANT'S OPENING BRIEF

ORAL ARGUMENT REQUESTED

Kayla S. Bivings
Pro Se Appellant
1312 17th St.
Denver, CO 80202 Unit 1573
Email: Bivingsk88@gmail.com

RECEIVED
United States Court of Appeals
Tenth Circuit
MAY 22 2025
CHRISTOPHER M. WOLPERT
Clerk

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Opening Brief

The District Court Erred by Dismissing Plaintiff's Well-Pled § 1983 Claims Under Iqbal and Twombly

While the district court dismissed Plaintiff's complaint primarily on abstention and immunity grounds, it also failed to credit the factual allegations — violating *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Plaintiff's complaint included:

Identification of a state judge as both presiding officer and named federal defendant

Timestamped dockets and emails showing judicial coordination during a confirmed stay

Documentation of due process violations, record manipulation, and sealed filings

These are not conclusory statements. They are fact-based assertions that meet federal pleading standards. The court's failure to allow discovery or acknowledge these facts was error.

Younger Abstention Does Not Apply Where There Is Bad Faith and Procedural Manipulation.

Federal courts may not abstain under *Younger v. Harris*, 401 U.S. 37 (1971), when the state process is pursued in bad faith or without adequate forum for federal claims. Plaintiff's case includes:

Evidence that the judge refused to recuse despite being a witness and defendant

Movement of the case during a stay

Retaliatory and misleading actions by opposing counsel

This places the case squarely within the *Middlesex* and *Phelps* exceptions to *Younger*.

Judicial Immunity and Eleventh Amendment Immunity Were Improperly Applied.

Immunity doctrines do not apply when judicial officers act:

Outside their jurisdiction (e.g., ruling after recusal)

In an administrative or collusive capacity (not adjudicative)

Or when sued in their individual capacity for unconstitutional conduct

Ex parte Young, 209 U.S. 123 (1908) permits forward-looking relief for ongoing constitutional violations, which Plaintiff sought.

Judicial Conflict of Interest and Due Process Violations

Presiding while also being a named defendant and witness violates In re Murchison, 349 U.S. 133 (1955), and creates a non-neutral tribunal. Both 28 U.S.C. § 455 and Colorado Canon 2.11 mandate disqualification. Refusal to recuse voids judicial legitimacy and violates Plaintiff's due process rights.

Case Progressed Improperly During a Confirmed Stay

The case was confirmed as stayed via clerk communication, yet the court:

Scheduled and conducted proceedings

Issued rulings

And allowed filings without notice to Plaintiff

This violates fair procedure and undermines the appearance of impartiality.

Record Manipulation and Improper Sealing of Key Filings

Plaintiff's filings, including evidence exhibits, were sealed or altered without explanation. This obstructed the appellate record, denied public transparency, and violated Plaintiff's First and Fourteenth Amendment rights.

Improper Coordination Between Judicial Officers and Opposing Counsel

Counsel continued filing during a stay and received coordinated rulings from a conflicted judge. Disclosures show the judge was a listed witness, yet no disqualification occurred. The timing and behavior raise legitimate concerns of collusion and bias under *Caperton v. Massey*, 556 U.S. 868 (2009).

The District Court Refused to Certify Constitutional Questions and Mislabeled the Record

Premature Denial of Constitutional Certification and PostHoc Justification

Plaintiff respectfully objects to the district court's refusal to certify her constitutional questions under 28 U.S.C. § 1254(2), issued only after the appeal record was escalated. The court's rationale — that the matter was already dismissed — misstates the sequence of events and wrongly forecloses an unresolved constitutional filing.

The certification motion (ECF 31) was filed on April 21, 2025, while the court still retained jurisdiction. The denial was only entered on May 1, 2025,

after Plaintiff highlighted record irregularities and the court faced potential appellate review. This textbook denial of constitutional review — without substantive analysis — is prejudicial and inconsistent with federal procedural norms. Appellant respectfully requests that the Tenth Circuit take notice of this sequence and allow the constitutional questions to be preserved, certified, or ruled on as part of appellate review. The district court had the opportunity— and the obligation—to intervene in an active constitutional violation. Its refusal to do so, despite clear evidence of ongoing due process harm, constitutes a failure of judicial oversight.

Plaintiff moved to certify constitutional questions under 28 U.S.C. § 1254(2).

Failed to rule

Mislabeled the filing as a state-law certification

And a clerk confirmed the docketing was incorrect, yet no correction followed

This blocked Plaintiff's right to seek higher federal review.

Additionally, the district court's order claimed that Plaintiff failed to allege specific facts supporting a conspiracy claim. This is incorrect. The record

includes detailed allegations of coordination between judicial officers and opposing counsel, including:

Use of recycled or altered filings across multiple dockets,

Judge Hilary Gurney continued to rule in Case No. 24CV510 after being named as a material witness and federal defendant. She never disqualified herself, even after formal notice. Her refusal to step down violated due process and makes her rulings invalid.

Clerk-timestamp manipulation, sealed exhibits, and communications being ignored or rerouted,

And procedural irregularities that show intent to retaliate under color of law.

These factual patterns are not speculative — they are documented and were submitted as part of Plaintiff's federal filings. Dismissal without discovery or acknowledgment of these specific events was error.

Continued Jurisdictional Conflict Over Case Against Evans

The same federal judge who dismissed Plaintiff's § 1983 claims now sits over her new civil case against the opposing party . That case stems from the

same retaliatory misconduct detailed here. This overlap raises an ongoing structural conflict of interest.

Request for Judicial Notice of Prior Case History

Plaintiff respectfully requests that this Court take judicial notice under Federal Rule of Evidence 201 of the docket history in *Bivings v. Arapahoe Department of Human Services*, Case No. 1:24cv-01519-LTB-RTG, which was also presided over by the same district judge assigned in the present matter. In that case, the Court dismissed Plaintiff's claims not on their merits, but for failure to comply with Rule 8 of the Federal Rules of Civil Procedure.

The case involved a separate but factually significant matter—namely, the undisclosed birth injury of Plaintiff's child—and raises concerns about a recurring procedural pattern used to avoid addressing substantive constitutional issues.

This prior case, along with the present appeal and the related case *Bivings v. Evans*, Case No. 1:25-cv-01125-RTG, illustrate an emerging pattern of judicial handling that Plaintiff believes merits appellate attention. While Plaintiff makes no improper allegation, she respectfully urges this Court to

evaluate the cumulative procedural context surrounding these matters in its assessment of the plausibility and fairness of judicial proceedings below.

Coordinated Misconduct by Named Appellees Acting Under Color of State Law

This appeal centers on the systemic and retaliatory misconduct of the following named state actors: Magistrate Andrea Paprzycki, Judge Marika Frady, Judge Hilary Gurney, Court Executive Scott Sosebee, Attorney Regulation Counsel Jessica Yates, and the Colorado Office of Attorney Regulation Counsel (OARC). Each acted under color of state law to sustain unconstitutional harm, obstruct judicial fairness, and silence Appellant's protected access to court.

Magistrate Andrea Paprzycki

Magistrate Paprzycki engaged in sustained misconduct during eviction proceedings (Case No. 2025C030104), issuing adverse rulings against Appellant after being named as a federal defendant and after formally recusing herself. On January 24, 2025, Paprzycki recused—but just four days later, on January 28, she reentered the case and signed an order dismissing Appellant's claims and awarding fees to opposing counsel. This action

violated her own disqualification, breached Canon 3, C.R.C.P. 97, and basic due process under the Fourteenth Amendment. Ruling after recusal is not a judicial act—it is a nullity under law and a retaliatory abuse of authority.

Judge Marika Frady

Judge Frady assumed jurisdiction over the case following Magistrate Paprzycki's formal recusal on January 24, 2025. Rather than correcting the tainted proceedings, Frady upheld and reinforced the void orders of her recused colleague. On January 28, 2025, she issued an "Order Quashing" Paprzycki's fee-based dismissal, labeling it "inadvertent." However, the record shows that Appellant had submitted timely objections and timestamped exhibits earlier that same day—meaning Frady acted with full knowledge of the misconduct and evidentiary disputes.

Despite clear violations of disqualification rules and procedural equity, Frady refused to invalidate Paprzycki's unauthorized rulings or initiate ethical review. She took no action to address Canon 2.11 of the Colorado Code of Judicial Conduct, which prohibits presiding over matters where impartiality may reasonably be questioned. Nor did she enforce 28 U.S.C. § 455, which mandates disqualification when a judge's predecessor has ruled after recusal.

Further, Judge Frady declined to hold hearings on critical motions backed by verifiable receipts and misapplied procedural standards to shield opposing parties. Her selective inaction—despite clear evidence of recusal breaches and manipulated filings—constitutes deliberate indifference and violates Appellant’s rights to due process under the Fourteenth Amendment.

Judge Hilary Gurney

Judge Gurney presided over Case No. 24CV510 while named as a federal defendant and formally disclosed as a material witness by opposing counsel. Despite receiving Exhibits 1–7 showing this conflict, she continued to rule—including issuing a Case Management Order on May 5, 2025. Gurney’s refusal to step down violated 28 U.S.C. § 455, Canon 2.11, and Appellant’s right to an impartial tribunal. A judge may not act as both witness and arbiter in the same case.

Scott Sosebee

As Court Executive of the 4th Judicial District, Mr. Sosebee was formally notified of ongoing judicial misconduct involving Paprzycki and Gurney. Under Chief Judge Order 2022-18, Section III(B), he was required to forward such complaints to appropriate authorities, including the OARC. His

failure to do so constitutes administrative complicity, not neutrality. He enabled the continuation of disqualified judicial conduct by withholding required oversight.

Jessica Yates

As head of the Office of Attorney Regulation Counsel, Ms. Yates received written documentation of ethical violations involving attorneys and magistrates acting under conflict. Despite her statutory mandate under C.R.C.P. 251.3, she failed to investigate, respond, or exercise oversight over her subordinates who mishandled Appellant's formal complaints. Her inaction deprived Appellant of institutional remedy and allowed coordinated retaliation to continue unchecked.

Office of Attorney Regulation Counsel (OARC)

OARC

OARC failed to act on systemic misconduct notices. This administrative silence endorsed unethical conduct and obstructed Appellant's access to fair process Office of Attorney Regulation Counsel (OARC)

OARC failed to act on formal notices of judicial and attorney misconduct, thereby obstructing Appellant's access to due process and endorsing unethical conduct. Staff member Mrs. Shae, the assigned investigator, claimed no misconduct occurred—despite having handled Appellant's prior 2024 complaint involving a birth injury case. When Appellant requested a new investigator, OARC refused, forcing the same conflicted individual to oversee all matters.

Notably, no investigation was opened until OARC was formally notified that Appellant had filed a federal civil rights complaint naming OARC. Only after this filing were limited investigations initiated in the following cases:

- #25-535 (Kory J. Cook),
- #25-536 (Rider Daily), and
- #25-730 (Magistrate Andrea M. Paprzycki).

However, the 24-730 misconduct complaint—pertaining to the same magistrate—was never investigated. Mrs. Shae was assigned to all of the above cases, including an earlier complaint involving attorney Michael Valentine, further compounding the conflict.

Notice of Ongoing State Proceedings and Anticipated Final Action

Appellant respectfully informs this Court that the related state proceeding, *Bivings v. Atlas Real Estate Group LLC*, Case No. 24CV510, remains active in El Paso County District Court as of the date of this filing. Despite Appellant's preserved objections and federal filings identifying the presiding judge as a named federal defendant and disclosed material witness, that court has continued to schedule hearings and issue minute orders.

On May 2, 2025, Appellant formally submitted Exhibits 1 through 7 into the state court record, including a Rule 26(a) disclosure from opposing counsel Meaghan Evans that explicitly identifies Judge Hilary Gurney as a witness with discoverable information. This proves that both parties and the court were aware of the conflict prior to the judge's continued rulings.

Nevertheless, on May 5, 2025, a Case Management Order was issued directing discovery, in direct violation of judicial disqualification requirements. Appellant anticipates that a ruling or dismissal may occur in the state case following the submission of this brief. Should that occur, Appellant reserves the right to submit a supplemental filing to this Court pursuant to Fed. R. App. P. 28(j) to ensure the record reflects all post-filing

developments relevant to the ongoing due process violations and jurisdictional conflict at issue.

Oral Argument Statement

This case warrants oral argument to address the complex constitutional and procedural issues presented. The appellant respectfully requests the opportunity to present these arguments to the court to ensure a thorough examination and understanding of the matters at hand.

Conclusion

The district court's dismissal in *Bivings v. Paprzycki, et al.*, Case No. 25cv00722-LTB, RTG, must be reversed.

PRAYER FOR RELIEF

Appellant respectfully requests that this Court:

Reverse the district court's dismissal order

Remand the case for further proceedings on the merits and allow full discovery

Preserve the constitutional questions raised in the record for certification under 28 U.S.C. § 1254(2)

Recognize the procedural and ethical violations surrounding judicial conflict,
Younger abstention, and immunity misuse

And grant any other relief this Court deems just and proper

Appellant also requests that this Court recognize the district court's failure to
act on credible allegations of judicial misconduct, and ensure this case
receives impartial review. Remand is required for further proceedings on the
merits and full discovery.

Plausible constitutional violations

Improper abstention and immunity applications

Extensive due process and ethical concerns

ATTACHMENTS (Submitted pursuant to 10th Cir. R. 28.2(A)(1))

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that this brief contains 2,130
words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).


This brief complies with the typeface requirements of Rule 32(a)(5) and the
type-style requirements of Rule 32(a)(6) because it has been prepared in a
proportionally spaced typeface using 14-point Times New Roman font.

Kayla S Bivings pro se

1312 17th Street

Denver, CO unit 1573

80202

A handwritten signature in black ink, appearing to read 'Kayla S Bivings', with a stylized, flowing script.

MAY 22 2025

Case No. 1:25-cv-00722-LTB-RTG Document 39 filed 05/01/25 USDC Colorado
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-00722-LTB-RTG

KAYLA S BIVINGS,

Plaintiff,

Order requested *

v

MAGISTRATE ANDREA PAPRZYCKI,
JUDGE MARIKA FRADY,
JUDGE HILARY GURNEY,
SCOTT SOSEBEE,
JESSICA YATES
OFFICE OF ATTORNEY REGULATION COUNSEL (OARC),

Defendants

MINUTE ORDER

ENTERED BY SENIOR JUDGE LEWIS T. BABCOCK

On April 21, 2025, Plaintiff submitted a 'Motion to Certify Constitutional Questions to the Colorado Supreme Court' (ECF No. 31). She requests that this Court certify the following questions:

- 1 Whether a sitting judge, listed as both a material witness by the opposing party and as a named defendant in a related federal case, may continue to preside over the state action without violating Canon 2.11 and Colorado Rule of Civil Procedure 97.
- 2 Whether sealed orders and scheduling actions issued during a confirmed stay — without service, notice, or opportunity to respond — violate the Plaintiff's due process rights under the 14th Amendment.
- 3 Whether opposing counsel (Meaghan Evans), listed as a federal defendant in a related civil rights case, may ethically and constitutionally continue to file, coordinate, and litigate against Plaintiff in a state case connected to the same facts and events.
- 4 Whether judicial immunity and Younger abstention may lawfully shield actions that are procedurally coordinated, ethically conflicted, and executed in bad faith.

The Court exercises its discretion and declines to certify Plaintiff's questions to the Colorado Supreme Court. On April 15, 2025, this case was dismissed because

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Plaintiff's claims are barred by the abstention doctrine in *Younger v Harris*, 401 U.S. 37 (1971), the named Defendants are protected by Eleventh Amendment immunity and absolute judicial immunity, and Plaintiff failed to allege specific facts showing an entitlement to relief to support her conspiracy claim. (See ECF No. 25). Further, on April 18, 2025, Plaintiff's motion for reconsideration was denied. (See ECF No. 30).

Dated May 1, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-00722-LTB-RTG

KAYLA S. BIVINGS,

Plaintiff,

v.

MAGISTRATE ANDREA PAPRZYCKI,
JUDGE MARIKA FRADY,
JUDGE HILARY GURNEY,
SCOTT SOSEBEE,
JESSICA YATES,
OFFICE OF ATTORNEY REGULATION COUNSEL (OARC),

Defendants.

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge filed April 8, 2025 (ECF No. 22). On April 9, 2025, Plaintiff filed her "Objection to the Magistrate Judge's April 8, 2025 Recommendation" (ECF No. 23). The Court has therefore reviewed the Recommendation *de novo* in light of the file and record in this case. On *de novo* review the Court concludes that the Recommendation is correct.

In the Amended Complaint, Plaintiff asserts the following three claims against state judicial officers and regulatory agencies: (1) "violation of due process (42 U.S.C. § 1983)"; (2) "conspiracy to violate civil rights (42 U.S.C. § 1985)"; and (3) "obstruction of justice." (ECF No. 10-1 at 2-4). She contends that "Defendants engaged in judicial misconduct, fraud, and procedural violations, resulting in an unfair legal process." (*Id.* at

2). Plaintiff seeks declaratory relief, damages, and injunctive relief, including “a stay on state cases 24CV510, 2024C49565, and 2025C030104” due to constitutional violations and judicial bias. (*Id.* at 2-5).

In the Recommendation, United States Magistrate Judge Richard T. Gurley concludes that Plaintiff’s claims are barred by the abstention doctrine in *Younger v. Harris*, 401 U.S. 37 (1971). (See ECF No. 22 at 3-5). Magistrate Judge Gurley also concludes that Plaintiff’s § 1983 official capacity claims for damages should be dismissed because Defendants are protected by Eleventh Amendment immunity, that Plaintiff’s § 1983 individual capacity claims should be dismissed because Defendants are protected by absolute judicial immunity, and that Plaintiff’s § 1985 claim should be dismissed because she fails to allege specific facts showing an entitlement to relief. (*Id.* at 5-8).

In the Objection, Plaintiff first argues that *Younger* abstention is not appropriate because she has made a “clear showing of bad faith, retaliation, and denial of due process in state proceedings” based on the following: (1) sealed rulings issued without notice or justification; (2) orders issued by Magistrate Paprzycki after recusal; (3) ongoing rulings by Judge Gurney, a listed witness and named defendant; and (4) a March 10, 2025 ruling by Judge Frady issued before reviewing Plaintiff’s filings. (ECF No. 23 at 2). Plaintiff attaches exhibits to support this “pattern of misconduct . . . sufficient to defeat *Younger* abstention.” (*Id.*). The attachments provided are the docket sheet for this action (ECF No. 23-1) and the docket sheet and email correspondence involving one of Plaintiff’s state court cases (ECF No. 23-2). The Court finds that Plaintiff has not met her “‘heavy burden’ to overcome the bar of *Younger* abstention by

setting forth more than mere allegations of bad faith or harassment.” *Phelps v. Hamilton*, 122 F.3d 885, 889 (10th Cir. 1997). Adverse rulings do not demonstrate bad faith or harassing conduct.

Plaintiff next objects to the recommendation to dismiss her § 1983 official capacity claims based on Eleventh Amendment immunity because the “Magistrate fails to distinguish between barred damages claims and viable prospective injunctive relief.” (ECF No. 23 at 2). Plaintiff is mistaken because the Recommendation clearly states that to the extent Plaintiff’s § 1983 claims are not barred by *Younger*, her § 1983 claims “asserted against Defendants in their official capacities for monetary relief,” should be dismissed based on Eleventh Amendment immunity. (See ECF No. 22 at 8). And as noted above, Plaintiff’s request for prospective injunctive relief (i.e., to enjoin pending court proceedings) is clearly subject to *Younger* abstention.

Plaintiff further objects to the recommendation to dismiss her § 1983 individual capacity claims based on absolute judicial immunity because “the judges acted outside their judicial role and without jurisdiction” where (1) Magistrate Paprzycki acted post-recusal; (2) Judge Gurney participated in a case where she is both a named witness and a defendant; and (3) Judge Frady issued rulings before reading filings. (ECF No. 22 at 3). The Court finds that these allegations are insufficient to defeat the judges’ entitlement to absolute judicial immunity for allegedly unconstitutional judicial conduct in presiding over Plaintiff’s state cases. See e.g., *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007) (dismissing claims against judicial defendants on grounds of absolute judicial immunity where alleged unconstitutional conduct related only to court proceedings where judges were clearly performing judicial acts).

Finally, Plaintiff objects to dismissal of the § 1985 conspiracy claim because she submitted “a detailed timeline, communications, withdrawn complaints, sealed orders, and other documents establishing a shared objective among defendants to suppress judicial misconduct complaints; suppression and manipulation of filings; and a pattern of obstruction involving multiple state actors.” (ECF No. 23 at 3). The Court disagrees; Plaintiff’s allegations do not demonstrate the existence of a conspiratorial agreement that was known to each defendant to support a conspiracy claim under § 1985. See *Snell v. Tunnell*, 920 F.2d 673, 702 (10th Cir. 1990) (“The participants in the conspiracy must share the general conspiratorial objective . . . To demonstrate the existence of a conspiratorial agreement it simply must be shown that there was a single plan, the essential nature and general scope of which [was] know[n] to each person who is to be held responsible for its consequences.”).

Accordingly, it is

ORDERED that Plaintiff’s “Objection to the Magistrate Judge’s April 8, 2025 Recommendation” (ECF No. 23) is overruled. It is

FURTHER ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 22) is accepted and adopted. It is

FURTHER ORDERED that the Amended Complaint (ECF No. 10) and the action are dismissed for the reasons set forth in the Recommendation. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. The

Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this dismissal would not be taken in good faith. It is

FURTHER ORDERD that all pending motions, including ECF No. 15 are denied as moot.

DATED: April 15, 2025.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court